

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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NUCLIMATE AIR QUALITY SYSTEMS, INC.  
and JAMES MILLER,

Plaintiffs,

vs.

CIVIL NO. 5:08-cv-317  
(GTS/ATB)

AIRTEX MANUFACTURING PARTNERSHIP,

Defendant.

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### **JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT**

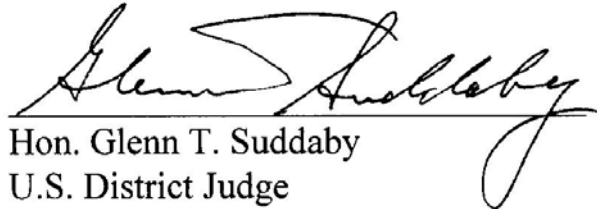
The Court having held a settlement conference on 12/6/11 and counsel having advised the Court that the parties in this action have entered into an agreement in settlement of all claims in this action, and that they reasonably anticipate finalizing their agreement shortly, following which this action will be discontinued, with prejudice, by stipulation pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure while preserving Defendant's right to appeal. Counsel has also advised that no infant or incompetent is a party to this action. Based upon this development, I find that it is not necessary for this action to remain on the calendar of the Court. It is therefore hereby

**ORDERED** that this action is **DISMISSED** in its entirety **without prejudice** pursuant to the procedure as set forth in L.R. 68.2(a) of the Local Rules of this court. This judgment is issued without prejudice to the right of the parties to secure reinstatement of the case within thirty (30) days after the date of this judgment by

making a showing that the settlement was not, in fact, consummated; and in the event that no request is made for reinstatement within thirty (30) days of the date of this judgment, the dismissal of this case shall thereafter be **with prejudice**; and it is further

**ORDERED** that Defendant reserves its right to appeal District Judge Neal McCurn's January 10, 2011 Memorandum-Decision and Order granting the Plaintiff Summary Judgment dismissing defendant's claim for permanent injunction with regard to the Q360. Said Notice of Appeal must be filed within thirty (30) days from the date of this judgment.

Dated: January 4, 2012  
Syracuse, New York

  
Hon. Glenn T. Suddaby  
U.S. District Judge